



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 9, 2003

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P. O. Box 4004
Huntsville, Texas 77342

OR2003-4749

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184000.

The Texas Department of Criminal Justice (the "department") received a request for all documents, notes, memoranda, or other records contained in the requestor's client's parole file. You state that you have provided the requestor with a copy of the Minute Sheet and Mandatory Supervision Certificate of the offender. You claim that the remaining information in the parole file is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information another statute makes confidential. You assert that the submitted information is made confidential by section 508.313 of the Government Code. Section 508.313 provides as follows:

- (a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

(b) Statistical and general information relating to the parole and mandatory supervision system, including the names of releasees and data recorded relating to parole and mandatory supervision services, is not confidential or privileged and must be made available for public inspection at any reasonable time.

(c) The department may provide information that is confidential and privileged under Subsection (a) to:

(1) the governor;

(2) a member of the board;

(3) the Criminal Justice Policy Council in performing duties of the council under Section 413.021; or

(4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

(d) In this section, "eligible entity" means:

(1) a government agency, including the office of a prosecuting attorney;

(2) an organization with which the department contracts or an organization to which the department provides a grant; or

(3) an organization to which inmates are referred for services by the department.

(e) This section does not apply to information relating to a sex offender that is authorized for release under Chapter 62, Code of Criminal Procedure.

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029.

Gov't Code § 508.313. You state that the submitted information is held by the Parole Division of the department and relates to a "releasee." Based on your representations and our review of the submitted information, we conclude that the documents at issue generally constitute records obtained and maintained by the Board of Pardons and Paroles that are governed by section 508.313 of the Government Code. Furthermore, the requestor does not appear to be an entity authorized by section 508.313(c) to obtain the submitted information.

We note, however, that these documents contain information that relates to a sex offender that was authorized for release under Chapter 62 of the Code of Criminal Procedure.¹ Section 508.313 does not apply to information relating to a sex offender that is authorized for release under Chapter 62 of the Code of Criminal Procedure. *See* Gov't Code § 508.313(e). Article 62.02(b) of the Code of Criminal Procedure requires a sex offender registrant to provide the Texas Department of Public Safety ("DPS") with the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a recent color photograph, or if possible, an electronic digital image of the person; a complete set of the person's fingerprints; the type of offense the person was convicted of; the age of the victim; the date of the conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; and any other information required by DPS. *See* Crim. Proc. Code art. 62.02(b). This information is generally public information with the exception of the following information: the person's social security number, driver's license number, telephone number; all information required by DPS outside of the enumerated categories of information; and any information that would identify the victim of the offense for which the person is subject to registration. *See* Crim. Proc. Code art. 62.08(b). Therefore, with the exception of the information authorized for release under Chapter 62 of the Code of Criminal Procedure, the department must withhold the submitted documents under section 552.101 in conjunction with section 508.313 of the Government Code.

Finally, the requestor argues that his client has a special right of access to the submitted information under section 552.023 of the Government Code. Section 552.023 in relevant part states:

¹A person who has a "reportable conviction or adjudication" under Chapter 62 shall register with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days. *See* Crim. Proc. Code art. 62.02(a). The inmate here was convicted of "sexual assault," a "reportable conviction" pursuant to article 62.01(5)(D) of the Code of Criminal Procedure. Therefore, the inmate was required to register particular information with the Texas Department of Public Safety. *See id.*

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

We note that section 552.023(b) provides that a governmental body “may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person’s privacy interests.” In this instance, the requested information is confidential under section 508.313 of the Government Code for reasons other than the protection of the privacy interests of the requestor’s client. We also note that section 508.313 specifically identifies those entities to which the information at issue may be released. The requestor has not shown that he is authorized to obtain the submitted information under section 508.313(c). Therefore, the requestor does not have a special right of access to the information at issue under section 552.023 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 184000

Enc. Submitted documents

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(w/o enclosures)